

60. The device according to claim 22, wherein the aseptically sterilized foodstuffs are sterilized at a level producing at least a 12 log reduction in *Clostridium botulinum*.

61. The device according to claim 22, wherein the aseptically disinfected bottles are sterilized to a level producing at least a 6 log reduction in spore organisms.

62. The device according to claim 53, wherein the residual level of hydrogen peroxide is less than .5 PPM.

REMARKS

The Applicant respectfully requests allowance of the above claims and reconsideration in light of the following remarks.

The status of the claims in the above-identified application is as follows. Claims 1-19 and 21 are canceled, claims 20 and 22-34 are pending, and claims 23-34 are withdrawn from consideration. Claims 35-62 were previously added.

Claims 20, 22, 35-55, and 57-62 are rejected under 35 U.S.C. §103(a) as being unpatentable over Gies (4,862,933) in view of Olsson (5,799,464). The Examiner alleges that Gies discloses a method and apparatus for aseptically packaging aseptically sterilized foodstuffs comprising the means for providing a plurality of containers (cups 15); aseptically disinfecting the plurality of containers (apparatus 19) see for example (column 4, lines 18-23); aseptically filling the aseptically disinfected

plurality of containers with the foodstuffs (apparatus 20) see for example (column 4, lines 23-25); and aseptically disinfected plurality of containers at a rate greater than 100 container per minute (column 4, lines 35 and 36) the machine can be operated to produce 33,600 packages per hour which is equal to 560 packages per minute. The Examiner states, however, that Gies does not disclose the container is a bottle. The Examiner takes the position that Olsson discloses this (column 3, lines 38-45).

The Applicant respectfully traverses the rejection. The Examiner has not made a *prima facie* case of obviousness. There are several elements of the independent claims of the present invention, claims 20 and 22, which are not disclosed or suggested in the cited combination of Gies and Olsson.

First, Gies does not teach, suggest, or disclose any of the following elements from claims 20 and 22; namely: **aseptically** disinfecting bottles; **aseptically** filling bottles; and, filling with **aseptically** sterilized foodstuffs. Further, and as important, nowhere in Gies is it suggested or disclosed to do all three of the aforementioned elements together *in combination*. Note well that aseptic, as clearly defined in the current invention, *inter alia*, on page 3, lines 12-13, is not synonymous with sterilizing. Yet, the Examiner has used the case *In re Boesch* (see pages 3 and 4), for the premise that reaching certain levels of cleanliness involves "only routine skill in the art". The use of *In re Boesch* in this case is not on point. *In re Boesch* involved the finding of certain optimal alloy combinations

within a known range. In the present invention, there are at a minimum **five** elements that when taken together, in combination, are beyond any previously known range in the prior art. It defies logic how attaining in combination five independent variables beyond any previously attainable range is routine. Further, in the "Response to Arguments" section (see page 5) the "[E]xaminer believes that Gies as modified by involving of routine skill in the art will be able to sterilize the food product to a level at least 12 log and the container to a level at least 6 log as the applicant claimed, will be considered as aseptic. This statement is merely a blind conclusion based on **no** supporting facts. Attempts in the industry have been heretofore unsuccessful at providing all three of these aseptic elements together in one apparatus.

The current invention involves **bottles** and also discloses aseptically disinfecting the **bottles** at a rate **greater than 100 bottles per minute**. The Examiner's argument reasoning goes something like this: Gies fills containers (i.e. **not** bottles) and sterilizes (i.e. **not** aseptically) them at over 100 packages per minute; Olsson is a patent in a nearby art and involves bottles. Thus, by combining Olsson's "bottles" with the cleaning rates of Gies and then by using routine skill in the art one can reach higher aseptic levels of cleaning bottles, higher aseptic levels of food cleanliness, and higher aseptic levels of filling bottles. This argument, while arguably logical, is built with improper hindsight. There has been no substantiation or evidence

of why this is obvious or routine. Further, a bottle is defined in the current invention, *inter alia*, clearly as a container wherein the ratio of the opening diameter to the height is less than 1.0 (see Page 5, lines 7-10). Clearly, Gies does not disclose sterilizing bottles, but instead discusses "cups" for holding semiliquid items such as yogurt, pudding, and the like (see Col. 1, lines 12-15). The configuration of the cups in Gies (See item 15 in Fig. 1) are clearly not equivalent to the configuration of the bottles in the present invention. Thus, the Examiner's burden has not been met and his argument must fail.

The rejections of claims 20 and 22 under 35 U.S.C. §103(a) are respectfully traversed as being moot in view of Applicant's remarks. Applicant respectfully submits, therefore, that independent claims 20 and 22, and claims 35 - 62 which depend therefrom, are in condition for allowance.

If the Examiner believes that anything further is necessary in order to place the application in better condition for allowance, the Examiner is requested to contact Applicant's undersigned representative at the telephone number listed below.



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